

**ORIGINAL**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 2.106 of the )  
Commission's Rules to Allocate ) ET Docket No. 95-18  
Spectrum at 2 GHz for Use by the ) RM-7927  
Mobile-Satellite Service )

To the Commission:

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REPLY OF COMSAT CORPORATION TO MOTOROLA AND UTC

COMSAT Corporation ("COMSAT"), through its COMSAT Mobile Communications business unit, hereby replies to the Partial Opposition to COMSAT's Motion for Leave to File Supplemental Comments ("Partial Opposition") filed by Motorola, Inc. ("Motorola") on March 27, 1996, and the Opposition to Motion ("Opposition") filed by UTC, The Telecommunications Association ("UTC") on April 1, 1996, in the above-captioned proceeding.<sup>1</sup>

In Supplemental Comments filed on March 14, 1996, COMSAT requested that the Commission incorporate into its decision in this proceeding the results of the 1995 World Radiocommunications Conference ("WRC-95") which provide for the early implementation of global Mobile Satellite Service ("MSS") systems at 2 GHz by January 1, 2000, and which recognize that MSS and existing terrestrial Fixed Service ("FS") microwave systems can share certain band segments at 2 GHz for an indefinite period of time

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<sup>1</sup> On April 5, 1996, COMSAT filed a Motion seeking a three-day extension, until April 11, 1996, in which to reply to Motorola's Partial Opposition.

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as part of an overall transition plan for the 2 GHz band. To expedite resolution of this proceeding, while assuring development of a full and accurate record, COMSAT requested that the FCC place its Supplemental Comments on public notice and seek comment from interested parties on its specific proposals for allocating the 2 GHz band to MSS under a gradual transition framework.

Motorola and UTC have opposed COMSAT's Motion for Leave to File its Supplemental Comments. However, neither party has made a persuasive argument to delay, or deny, consideration of COMSAT's Supplemental Comments, or to refute COMSAT's showing that WRC-95 took actions that are directly related to the issues under consideration in this proceeding including the establishment of arrangements for a gradual transition of FS facilities from the 2 GHz band. Accordingly, COMSAT requests that the Commission accept COMSAT's Supplemental Comments for filing in this proceeding, that it put the Supplemental Comments on public notice for comment by interested parties, and that it proceed on the basis of the record in this proceeding to allocate the 2 GHz band to MSS consistent with the results of WRC-95.

**I. MOTOROLA'S INSISTENCE ON A FURTHER NPRM IS UNJUSTIFIED**

Motorola urges the Commission not to consider COMSAT's Supplemental Comments now, but to initiate a further Notice of Proposed Rule Making ("NPRM") in which to analyze the merits of

COMSAT's proposals.<sup>2</sup> It argues that a new NPRM is necessary because COMSAT's Supplemental Comments raise issues outside the scope of the notice given by the FCC in its initial NPRM.<sup>3</sup>

Motorola notes that the U.S. Court of Appeals for the D.C. Circuit, in MCI Telecommunications Corp. v. FCC, 57 F.3d 1136 (1995) ("MCI"), admonished the Commission that it must give interested parties notice of the issues involved. The Court stated that potential participants should not be required to read all the comments filed in a proceeding to discover what issues are being debated. Motorola fails, however, to explain how MCI is relevant to the instant proceeding and therefore supportive of its position. It fails to because the factual context of the MCI decision is so different from the instant proceeding that while its teachings are valid, they are not relevant.<sup>4</sup>

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<sup>2</sup> Motorola Partial Opposition at 1-5.

<sup>3</sup> See Notice of Proposed Rule Making, ET Docket No 95-18, 10 FCC Rcd 3230 (1995).

<sup>4</sup> In MCI, the FCC had given notice that it wanted to look at the issue of Open Network Architecture only for Enhanced Service Providers ("ESPs"). In fact, the FCC had rejected suggestions to broaden the scope of the proceeding beyond ESPs. Despite this, during the proceeding a question involving Feature Group D for Inter Exchange Carriers ("IXCs") was raised in comments and ultimately resolved by the agency. The Court rejected the FCC's argument that the parties were on notice that such an issue could be decided. It found that given the circumstances, a mere footnote in a "Background" section of the NPRM was insufficient to give notice to the public that Feature Group D for IXC's was at issue. 57 F.3d at 1142. This is certainly not the case here.

The Administrative Procedure Act obligates the Commission to afford interested parties a reasonable opportunity to participate in a rule making.<sup>5</sup> This obligation, in turn, requires that the FCC issue a NPRM which makes known what general issues are going to be debated in the proceeding to enable the public to participate if they wish and to ensure the FCC has as complete a record as possible upon which to make a decision.<sup>6</sup> The Commission has followed this procedure exactly in this case.

The Commission's NPRM made clear that the issue to be resolved in this proceeding was the allocation of spectrum in the 2 GHz band to MSS. It noted the allocations made at the 1992 World Administrative Radio Conference ("WARC-92") and its intention to pursue additional international allocations for MSS at WRC-95.<sup>7</sup> The NPRM articulated several alternative allocation schemes and addressed the issues of sharing, relocation and compensation for moving in the context of the affected parties.<sup>8</sup> It would be hard to imagine a clearer notice of the broad issues which were to be discussed in this proceeding.

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<sup>5</sup> Florida Power & Light Co. v. United States, 846 F.2d 765, 771 (D.C. Cir. 1988).

<sup>6</sup> National Ass'n of Home Health Agencies v. Schewiker, 690 F.2d 932, 949 (D.C. Cir. 1982).

<sup>7</sup> NPRM at 3230.

<sup>8</sup> NPRM at 3231-3233.

Once this type of notice is given, then it is the interested parties' obligation to read the comments to discover the sub-issues being debated. COMSAT's Supplemental Comments -- and indeed, its initial Comments and Reply in this proceeding<sup>9</sup> -- address the broad issues raised by the Commission in its NPRM. In response to the NPRM, COMSAT has previously shown that wholesale relocation of incumbents in the MSS uplink and downlink bands is not necessary from a technical standpoint and that sharing with FS microwave links on the MSS downlink is feasible for some period of time.<sup>10</sup> The results of WRC-95 underscore our conclusions and provide additional support for the adoption of a gradual transition plan to deploy MSS in the 2 GHz bands in the United States. Accordingly, the Commission is not obligated legally to initiate a further NPRM to address proposals advanced in COMSAT's Supplemental Comments which are responsive to the issues raised in the initial NPRM and debated in the record here. Nor should it countenance such obvious tactics on the part of Motorola to delay a decision in this proceeding.

COMSAT recognizes that the Commission, in the interest of developing a full and accurate record, may benefit from the

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<sup>9</sup> Comments of COMSAT Corporation, ET Docket No. 95-18, filed May 11, 1995 ("Comments"); Reply of COMSAT Corporation, ET Docket No. 95-18, filed June 21, 1995 ("Reply").

<sup>10</sup> Comments at 18-24, Appendices II & III; Reply at 4-8 (citing similar studies submitted to the WRC-95 Conference Preparatory Meeting).

placement of our Supplemental Comments on public notice -- that is why COMSAT suggested this procedure in the first place. Accordingly, COMSAT would favor a reasonable comment period in which interested parties would be given an opportunity to comment on our Supplemental Comments. Based on the NPRM and the record in this proceeding, COMSAT urges the Commission to proceed with the allocation of the 2 GHz bands to MSS at this time and to consider placing COMSAT's Supplemental Comments on public notice if it believes this would facilitate resolution of the remaining issues in this proceeding.

## **II. THE FCC CANNOT IGNORE THE SIGNIFICANCE OF MSS/FS SHARING STUDIES AS UTC SUGGESTS**

While UTC takes no position on the allocation of spectrum at 2 GHz for MSS, it argues against consideration of COMSAT's Supplemental Comments and attempts to refute COMSAT's analysis of the Final Acts of WRC-95.<sup>11</sup> Based upon a cursory examination of the Final Acts, UTC maintains that WRC-95 failed to establish "specifics" with regard to 2 GHz relocation issues or to specify the process for coordinating or sharing spectrum at 2 GHz between fixed microwave and MSS systems.<sup>12</sup> UTC offers no support for these statements, and in fact, a full examination of the WRC-95 record supports COMSAT's stated positions regarding the

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<sup>11</sup> Final Acts of the World Radiocommunication Conference (WRC-95), Geneva, 1995 ("WRC-95 Final Acts").

<sup>12</sup> UTC Opposition at 3.

feasibility for sharing spectrum and the provision for a gradual transition framework in the 2 GHz band.<sup>13</sup>

COMSAT has previously demonstrated in the record of this proceeding that it is feasible for MSS to share the downlink band at 2165-2200 MHz with existing fixed microwave systems for an extended period of time. Technical interference studies conducted by COMSAT Labs,<sup>14</sup> and other studies performed in the ITU-R Task Group 2/2 and as part of the Conference Preparatory Meeting for WRC-95,<sup>15</sup> show that MSS can share the downlink band for an extended period of time without causing harmful degradations to the internationally agreed performance standards of existing FS operations in the 2 GHz band.

As indicated in our Supplemental Comments, the Final Acts of WRC-95 support these conclusions and provide a framework to coordinate MSS downlinks with terrestrial fixed microwave under a gradual transition plan. At WRC-95 the conferees agreed to Final Acts that provide for the early implementation of global MSS systems by year 2000 on a co-primary basis with existing FS

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<sup>13</sup> See, e.g., WRC-95 Final Acts (Part II), Resolution 46, Annex 2, at 246.

<sup>14</sup> COMSAT Comments at Appendix II.

<sup>15</sup> See ITU-R Doc. 2-2/TEMP/94 (Rev.1)-E; ITU-R "CPM Report on technical, operational and regulatory/procedural matters to be considered at the 1995 World Radiocommunications Conference," Geneva, 1995 ("WRC-95 CPM Report").

operations.<sup>16</sup> The WRC-95 Final Acts reflect the international consensus that sharing between MSS and existing FS systems at 2 GHz is feasible and that Administrations should take certain steps to implement the gradual transfer of FS operations from the overlapping portions of the 2 GHz band.<sup>17</sup> To ensure that there is no unacceptable interference to FS operations during the extended sharing/transition period, the Conference directed the ITU-R and the Radiocommunication Bureau to develop the system specific methodology to assess the impact of interference to FS operations in the detailed coordination of MSS systems.<sup>18</sup>

COMSAT recognizes that the issues involved in the coordination process between fixed microwave and MSS are complex. For that reason, COMSAT carefully outlined the process in two flow charts attached to the Supplemental Comments, which provide a step-by-step guide, complete with cross references to the relevant ITU-R Recommendations, for the system specific coordination methodologies.<sup>19</sup> To further develop this process, while facilitating prompt resolution of this proceeding, COMSAT has proposed that its Supplemental Comments be put on public

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<sup>16</sup> WRC-95 Final Acts (Part 1), International Table of Frequency Allocations at 135.

<sup>17</sup> WRC-95 Final Acts (Part II), Res. COM 5-10, Resolves 4.1 & 4.3.

<sup>18</sup> WRC-95 Final Acts (Part II), Res. COM 5-10, Requests 1-1.2 and Resolution 46, Annex 2.

<sup>19</sup> Supplemental Comments, Attachments B & C.



notice and that the technical discussions between the MSS and FS industries concerning possible sharing and transition arrangements for the 2 GHz band be continued on an expedited basis.

We note UTC's concern that the Commission not deviate from the "previously-adopted" transition rules for the relocation of fixed microwave users in the 2 GHz band.<sup>20</sup> In the Emerging Technologies proceeding, the Commission indicated that by adopting relocation rules for the Emerging Technology bands it did not address the types of services that would be authorized in those bands, or the degree to which sharing could occur.<sup>21</sup> The FCC stated that it would wait until specific services were allocated to adopt specific interference standards to allow for the sharing of the Emerging Technologies spectrum.<sup>22</sup> In so doing, it emphasized that its goal in the Emerging Technologies proceeding was to "foster development of new technologies that will allow U.S. industry to move quickly and keep pace with

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<sup>20</sup> UTC Opposition at 2.

<sup>21</sup> First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd 6886, 6893 (1992). In the fourth Memorandum Opinion and Order, 9 FCC Rcd 1943, 1952 (1994), in the Emerging Technologies proceeding, the Commission expressly stated that issues raised by AMSC regarding the inappropriateness of applying the terrestrial relocation rules to MSS, as opposed to PCS, systems was beyond the scope of the docket and could be addressed in a later proceeding dealing with the MSS service.

<sup>22</sup> Id. at 6890.

telecommunications developments throughout the world."<sup>23</sup> This goal will clearly be undermined in the case of MSS, if the Commission, as UTC requests, ignores the evidence in the record regarding the feasibility of MSS/FS sharing and the need to provide for a workable framework to gradually transition existing FS facilities from overlapping portions of the MSS 2 GHz band.

### III. CONCLUSION

For the foregoing reasons, COMSAT requests that the Commission accept COMSAT's Supplemental Comments for filing in this proceeding and that it adopt the proposals and recommendations advanced therein by COMSAT to allocate the 2 GHz band to MSS consistent with the results of WRC-95.

Respectfully Submitted,

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April 11, 1996

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<sup>23</sup> Id. at 6893.

CERTIFICATE OF SERVICE

I, Pauline E. DeMartino, hereby certify that the foregoing "Reply of COMSAT Corporation To Motorola And UTC" was served by hand delivery or first-class mail, postage prepaid, this 11th day of April, 1996 on the following persons:

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